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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,490	11/17/2005	Dominique Petit	05-240	3577
34704 7590 07/06/2009 BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510				
EXAMINER				
WOODALL, NICHOLAS W				
ART UNIT		PAPER NUMBER		
3775				
MAIL DATE		DELIVERY MODE		
07/06/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/527,490

Applicant(s)

PETIT, DOMINIQUE

Examiner

Nicholas Woodall

Art Unit

3775

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11 and 13-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11 and 13-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to applicant's amendment received on 03/23/2009.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 11, 13, 14, 15, and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Nishiyama (U.S. Patent 4,886,256).

Nishiyama discloses a device capable of linking at least two implantable connecting assemblies comprising a cylindrical support (36) made of a polymer material having an inner diameter, i.e. the surface defining cavity 48, a straight rod (54) having a curved external surface coaxially extending with the support, and a helical spring (32) embedded within and coaxially extending parallel with the support being formed from a plurality of turns surrounding the rod, wherein the turns have an inner diameter forming a cylindrical space in which the rod is positioned, i.e. the inner surface of the support and the inner diameter of the spring define cavity 48 that receives the rod, and an external diameter greater than the inner diameter of the support.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 18 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atkinson (U.S. Patent 6,402,750) in view of Nishiyama (U.S. Patent 4,886,256).

Atkinson discloses a device comprising at least two connecting assemblies and a linking element (for example see Figures 11A-11B) linking the at least two connecting assemblies. Atkinson fails to disclose the device wherein the linking element comprises a support made of polymer, a rod coaxial with the support, and a spring. Atkinson discloses the device comprising a linking element in order to allow relative movement between two connecting assemblies. Nishiyama teaches a device comprising at least two connecting assemblies and a linking element (for example see Figure 4) linking the at least two connecting assemblies in order to allow relative movement between two connecting assemblies. The linking element comprises a cylindrical support (36) made of a polymer material having an inner diameter, i.e. the surface defining cavity 48, a straight rod (54) having a curved external surface coaxially extending with the support, and a helical spring (32) embedded within and coaxially extending parallel with the support being formed from a plurality of turns surrounding the rod, wherein the turns have an inner diameter forming a cylindrical space in which the rod is positioned, i.e. the inner surface of the support and the inner diameter of the spring define cavity 48 that receives the rod, and an external diameter greater than the inner diameter of the support. Because both Atkinson and Nishiyama teach devices comprising linking elements linking at least two connecting assemblies, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the

linking element of one for the linking element of the other in order to achieve the predictable results of allowing relative movement between two connecting assemblies.

6. Claims 11, 13-20, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Navas (U.S. Patent 5,540,688) in view of Nishiyama (U.S. Patent 4,886,256).

Navas discloses a device comprising at least connecting assemblies and a linking element (for example Figure 8) linking at least two connecting assemblies, wherein the linking element comprises a tubular support (12') made from a polymer material having an inner diameter defining an internal cavity, a straight rod (11') having a curved external surface extending coaxially within the cavity of the support, and a curved stiffening/rigid linking element (7) composed of a sheet of material with a substantially U-shaped cross section, i.e. as shown in Figure 8 elements 7 have a substantially U-shaped cross section. Navas fails to disclose the device wherein the support of the linking element further includes a spring embedded within the support. Navas discloses the device comprising a linking element with a support in order to allow relative movement between two connecting assemblies. Nishiyama teaches a device comprising a linking element (for example see Figure 8) linking at least two connecting assemblies in order to allow relative movement between two connecting assemblies. The linking element comprises a tubular support (64) made of a polymer material having an inner diameter defining an internal cavity, a straight rod (54) having a curved external surface coaxially extending with the support, and a helical spring (32) embedded within and coaxially extending parallel with the support being formed from a plurality of turns

surrounding the rod, wherein the turns have an inner diameter forming a cylindrical space in which the rod is positioned, i.e. the inner surface of the support and the inner diameter of the spring define cavity 48 that receives the rod, and an external diameter greater than the inner diameter of the support. Because both Navas and Nishiyama teach linking devices including a support, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the support of one linking device with the support of the other linking device in order to achieve the predictable results of allowing relative movement between two connecting assemblies.

7. Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Navas (U.S. Patent 5,540,688) in view of Nishiyama (U.S. Patent 4,886,256) further in view of Schaffler-Wachter (U.S. Publication 2001/0012937).

The invention of Navas as modified by Nishiyama discloses the invention as claimed except for the device comprising a fork-shaped head with two lateral arms delimiting a space for receiving a respective linking element and a closure piece with a U-shape, two arms, and an internal thread for receiving a locking screw. The invention of Navas as modified by Nishiyama discloses a device comprising at least two connecting assemblies connected to the device in order to anchor the linking element to the spine. Schaffler-Wachter teaches a device comprising a linking element and at least two connecting assemblies, wherein the connecting assemblies include forked-shaped heads (11) with two lateral arms defining a space (14) capable of receiving a linking element and a closure piece (7) with a U-shape, two arms, and an internal thread (18) for receiving a locking screw, wherein the lateral arms of the fork-shaped head have arc

shaped shoulders with an inclined upper surface and the closure piece having complementary guide means for cooperating with the arc shaped shoulders when the closure pieces is engaged on the head in order to anchor the linking element to the spine. Because the invention of Navas as modified by Nishiyama and Schaffler-Wachter teach devices comprising connecting assemblies, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute one connecting assembly for the other in order to achieve the predictable results of anchoring the linking element to the spine.

Response to Arguments

8. Applicant's arguments with respect to claims 11 and 13-26 have been considered but are moot in view of the new ground(s) of rejection. The examiner has provided new grounds of rejection using prior art references not previously used in prior rejections making the applicant's arguments moot. The new grounds of rejection were necessitated by the amendment making this office action **FINAL**.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited references the examiner felt were relevant to the application.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is (571)272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas Woodall/
Examiner, Art Unit 3775

/Thomas C. Barrett/
Supervisory Patent Examiner, Art
Unit 3775